

48A C.J.S. Judges § 227

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

B. Nature and Scope of Acts and Functions

§ 227. Misappropriation of funds or maladministration of estate

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  36

A judge is liable for misappropriation of funds received in his or her judicial capacity, but generally, the judge is immune from liability for his or her judicial acts in connection with the administration of estates which he or she has assumed by virtue of his or her office, other than for breaches of duty imposed by statute.

A judge who has misappropriated funds received in his or her judicial capacity is liable therefor.¹ Also, where a judge chooses to delegate a part of his or her duties to clerks so far as the financial affairs of the court are concerned, his or her failure to supervise and check their activities in financial matters and thus to permit shortages to occur makes the judge liable for proper financial accounting of the funds received by the court.² Where the injured person is a party to the wrong charged against the judge, he or she cannot recover the loss he or she sustained.³

Maladministration of estate.

The rule which exempts a judge from liability for acts in his or her judicial capacity applies with respect to errors of judgment by a judge in his or her judicial capacity in the administration of an estate which he or she has assumed by virtue of the office.⁴ On the other hand, the judge may be held liable for acts of a ministerial character in such administration.⁵ Under some statutes, a judge may be liable for breaches of duty resulting in loss to estates being administered by the judge by virtue of his or her office or under his or her supervision.⁶ Failure of a judge to perform the duties imposed on the judge by statute with respect to estates being administered under his or her supervision is negligence per se for which the judge is liable.⁷

So, a judge who by virtue of the office comes into possession of the estate of another and undertakes the administration and distribution thereof is civilly liable for any erroneous or corrupt disbursements therefrom.⁸ In addition, if the judge has assumed the obligation of paying the debts of the estate, he or she is liable for any negligent failure to pay a debt which has been duly approved.⁹ The judge is not personally liable for items of cost in the administration which are payable out of the estate.¹⁰ To justify a recovery against a judge, loss must have resulted from the judge's breach of duty or negligence.¹¹

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Footnotes

- 1 Ga.—*Brown v. Rutledge & Summerour*, 20 Ga. App. 118, 92 S.E. 774 (1917).
Wash.—*King County v. United Pac. Ins. Co.*, 72 Wash. 2d 604, 434 P.2d 554 (1967).
- 2 Wash.—*King County v. United Pac. Ins. Co.*, 72 Wash. 2d 604, 434 P.2d 554 (1967).
- 3 Okla.—*Kilpatrick v. James*, 1935 OK 182, 173 Okla. 629, 48 P.2d 1034 (1935).
- 4 S.C.—*Truesdale v. Bellinger*, 172 S.C. 80, 172 S.E. 784 (1934).
- 5 S.C.—*Truesdale v. Bellinger*, 172 S.C. 80, 172 S.E. 784 (1934).
Tex.—*Heyn v. Massachusetts Bonding & Insurance Co.*, 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).
- 6 Ky.—*American Sur. Co. of New York v. Skaggs' Guardian*, 247 Ky. 687, 57 S.W.2d 495 (1933).
- 7 Tex.—*Heyn v. Massachusetts Bonding & Insurance Co.*, 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).
- 8 Neb.—*Wheeler v. Barker*, 51 Neb. 846, 71 N.W. 750 (1897).
- 9 S.C.—*Truesdale v. Bellinger*, 172 S.C. 80, 172 S.E. 784 (1934).
- 10 S.C.—*Greenville News-Piedmont Co. v. U.S. Fidelity & Guar. Co.*, 169 S.C. 188, 168 S.E. 396 (1933).

11

Ky.—[Langston v. Kelly](#), 272 Ky. 109, 113 S.W.2d 471 (1938).

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